

REMARKS/ARGUMENT

Claims 1-9 were previously canceled, claims 10-14, 17-21, and 23-26 have been amended herein, claims 28-36 have been added herein, and claims 15 and 16 have been canceled herein without prejudice. Accordingly, claims 10-14 and 17-36 are currently under consideration in this case. It is respectfully submitted that the amendments and new claims do not add new matter and have adequate support throughout the Specification.

Initially, Applicants thank the Examiner for indicating that claims 19-27 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. As such, Applicants have rewritten claim 19 in independent form as new claim 28, and dependent claims 20-27 have been rewritten as new claims 29-36. Accordingly, it is now believed that claims 28-36 are in allowable condition.

Otherwise, Applicants respectfully traverse all objections and claim rejections for the reasons that follow:

I. OBJECTIONS TO CLAIMS 11, 12, 14, 19, 20, AND 24

Claims 11, 12, 14, 19, 20, and 24 were objected to for containing various minor informalities.

Applicants have amended these claims to address the Examiner's concerns. It is respectfully submitted that the amendments do not add new matter. Accordingly, it is kindly requested that the objections to claims 11, 12, 14, 19, 20, and 24 be withdrawn.

II. REJECTIONS OF CLAIMS 15 AND 23-26 UNDER 35 U.S.C. § 112

Claims 15 and 23-26 were rejected as indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Applicants have amended these claims to address the Examiner's concerns. It is respectfully submitted that the amendments do not add new matter. Accordingly, it is kindly requested that the rejections of claims 15 and 23-26 under 35 U.S.C. § 112, second paragraph, be withdrawn.

III. REJECTIONS OF CLAIMS 10-18 UNDER 35 U.S.C. § 103(a)

Claims 10-18 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 2,769,503 to Wagner (hereinafter "Wagner"). Claims 15 and 16 have been canceled herein, thereby mooted the rejections of these claims. Claim 10 has been amended to include the features of canceled claim 16. It is respectfully submitted that claims 10-14, 17, and 18 are allowable for the following reasons.

Claim 10 relates to "[a] freight vehicle, comprising . . . a panel arranged adjacent to at least one of the lateral sides of the vehicle . . . and a cover pivotally mounted to the chassis and arranged below the door of the driver's cab, the cover being pivotable between a closed position concealing the panel and an open position revealing the panel."

Wagner discloses a pivotally mounted fender for a cab-over-engine vehicle. As characterized, the Wagner vehicle includes a vehicle fender 31 disposed below the driver's cab. The fender 31 may be pivoted toward the front of the vehicle, so that an operator may gain access to the engine compartment. (Wagner, col 1, lines 18-28).

To make out a prima facie case of obviousness of a claim, the Examiner must demonstrate, inter alia, a motivation or suggestion for a proposed modification of a reference. In accordance with this standard, it is respectfully submitted that there exists no motivation or suggestion to modify Wagner with "a cover pivotally mounted to the chassis and arranged below the door of the driver's cab, the cover being pivotable between a closed position concealing the panel and an open position revealing the panel," as recited in claim 10.

The Office Action asserts that it would have been obvious to include a cover to shield the fender 31 because "the panel itself acts as a cover, and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Company v. Bemis Company, Inc.*, 193 U.S.P.Q. 8." (Office Action, page 5, paragraph 17). Respectfully, the Office Action's reliance on *St. Regis* may be misplaced.

In *St. Regis*, the 7th circuit examined the validity of a paper bag patent, which claimed a paper bag having plies, which were all stepped with respect to one another. The court found that the prior art disclosed paper bags, in which some, but not all of the plies were stepped. From this, the court determined it would have been obvious to step all of the plies of prior art

bags. Thus, *St. Regis* held that the duplication of elements already found in the prior art involves only routine skill.

However, the present invention is not concerned with duplicating prior art elements. Unlike *St. Regis*, in which the prior art disclosed duplicated features (i.e., stepped plies), Wagner simply does not disclose "a cover pivotally mounted to the chassis and arranged below the door of the driver's cab, the cover being pivotable between a closed position concealing the panel and an open position revealing the panel." **Thus, by including a cover, claim 1 simply does not "duplicate" any features disclosed in Wagner -- In other words, claim 1 simply cannot duplicate what Wagner does not disclose.**

The Office Action disagrees and asserts that "the panel itself is a cover." However, Applicants are hard pressed to understand how the panel can be a cover for itself. The Office Action cannot first assert that the fender 31 of Wagner is the panel of claim 10, and then subsequently assert that it comprises an entirely different feature. If the fender 31 is the panel, it cannot be the cover for the panel, and if the fender 31 is the cover for the panel, it cannot be the panel itself. By straining the language of claim 10 to mean something that is inherently illogical, the Office Action ignores the duty to give the claims their broadest reasonable interpretation.

In short, neither Wagner nor the knowledge known to those skilled in the art suggests the desirability of the modification proposed in the Office Action. Accordingly, there simply does not exist a motivation or suggestion to modify Wagner in the manner suggested by the Office Action.

For at least the foregoing reasons, it is respectfully requested that claim 10 is allowable over Wagner. Furthermore, since claims 11-14, 17, and 18 ultimately depend from claim 10, it is respectfully submitted that these claims are allowable over Wagner for at least the same reasons. Claims 19-27 are allowable by virtue of their dependence from claim 10. Accordingly, it is kindly requested that the rejections of claims 10-18 under 35 U.S.C. § 103(a) be withdrawn.

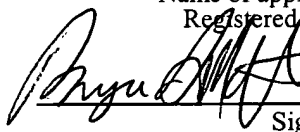
IV. CONCLUSION

In view of the foregoing, it is respectfully submitted that all pending claims are currently in allowable condition. Accordingly, reconsideration and prompt allowance of all pending claims is therefore earnestly solicited.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 10, 2003:

Robert C. Faber

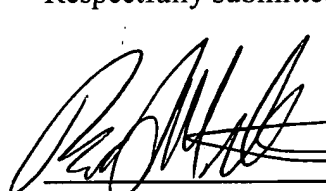
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October 10, 2003

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Respectfully submitted,

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